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UNITED STATES DEPARTMENT OF AGRICULTURE,
BUREAU OF BIOLOGICAL SURVEY.

INSTRUCTIONS FOR THE GUIDANCE OF UNITED STATES
GAME WARDENS AND DEPUTIES.

Introduction.

This manual is intended as a guide to those whose work is connected with the enforcement of the Migratory Bird Treaty Act of July 3, 1918, and is especially for the use of the wardens in the field. In part it is explanatory of but in no way supersedes or modifies the Administrative and Fiscal Regulations of the Department.

Wardens can not become proficient without being thoroughly familiar with the Departmental regulations and with the practice and procedure in handling violations. It is obviously impracticable to include in a manual of this character all the law relating to the practice and procedure of the courts in the exercise of their criminal jurisdiction, but it is thought that the brief instructions contained herein will be helpful to a warden in the discharge of his duties.

Whenever a warden is in doubt as to the law or methods of procedure he should write or wire at once to the Bureau for information, stating the case fully and plainly. Cooperation and advice may also be had from United States Attorneys.

The efficiency of a warden and his usefulness to the Bureau will depend in a large measure upon his ability to command the respect and confidence of those with whom he comes in contact. He should be courteous and upright at all times in all his dealings. Discourtesy and inefficiency on the part of a warden will not be tolerated by the Bureau.

A warden to be a good officer must be courageous, as well as courteous, but any form of harshness or an overbearing attitude should be avoided. His methods should be direct, orderly, and firm, without provoking resistance.



While a warden may exercise reasonable force, when necessary, in effecting an arrest, he should be courteous and considerate to the fullest possible extent. There may be times when a warden must act swiftly and forcibly, in which event a reputation for tact and courtesy will sustain him, if criticized.

Cooperation on the part of the public, and particularly on the part of State and municipal officials, is very necessary for the proper and effective enforcement of the Migratory Bird Treaty Act. These officials in the various branches of the State and municipal governments are all in a position to render invaluable assistance. A warden should earn the confidence and respect of all such officers and of the public to the end that their cooperation may be ready and voluntary.

POWERS OF WARDENS.

The powers of wardens are conferred by Section 5 of the Migratory Bird Treaty Act, which provides as follows:

"Sec. 5. That any employee of the Department of Agriculture authorized by the Secretary of Agriculture to enforce the provisions of this Act shall have power, without warrant, to arrest any person committing a violation of this Act in his presence or view and to take such person immediately for examination or trial before an officer or court of competent jurisdiction; shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction for the enforcement of the provisions of this Act; and shall have authority, with a search warrant, to search any place. The several judges of the courts established under the laws of the United States, and United States commissioners may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue warrants in all such cases.

All birds, or parts, nests, or eggs thereof, captured, killed, taken, shipped, transported, carried, or possessed contrary to the provisions of this Act or of any regulations made pursuant thereto shall, when found, be seized by any such employee, or by any marshal or deputy marshal, and, upon conviction of the offender or upon judgment of a court of the United States that the same were captured, killed, taken, shipped, transported, carried, or possessed contrary to the provisions of this Act or of any regulation made pursuant thereto, shall be forfeited to the United States and disposed of as directed by the court having jurisdiction."

When a person commits a violation in view of a warden or the warden has a warrant for the arrest of a person, he may, after the arrest has been made, search his prisoner and take from his person, and hold for the disposition of the court, any property connected with the offense charged, or that may be used as evidence against him, or any weapon that might enable the prisoner to commit an act of violence or effect his escape.

DUTIES.

Wardens are appointed for the specific purpose of enforcing the provisions of the Migratory Bird Treaty Act and the regulations thereunder; and the authority so conferred may be exercised in any part of the United States, subject only to such limitations as may be prescribed by the Bureau.

Wardens shall thoroughly familiarize themselves with the provisions of the Administrative and Fiscal Regulations of the Department, and of these instructions; also, wardens shall carefully study the provisions of the Migratory Bird Treaty Act and of the regulations prescribed thereunder.



All wardens, except those occupying cooperative positions, shall devote their entire time to the service and shall not be engaged in any other business, either public or private. (See Sec. 34, Administrative Regulations.)

at government expense

No travel/shall be performed by a warden, except in the discharge of his official duties.

A warden will be restricted in the discharge of his duties to the district covered in his letter of authorization and special instructions from the Bureau.

When two or more wardens have been assigned to duty in the same district, each will so time his trips of investigations that the territory will not be patrolled at the same time by another warden. If conditions require the presence of more than one warden in a particular locality at one time the facts should be reported to the Bureau which in proper cases will authorize wardens to operate together. In urgent cases such permission may be requested and granted by wire.

It shall be the duty of a warden to familiarize himself with migratory bird conditions in his district and especially in those sections wherein the law is most frequently violated. The important hunting sections should be visited as frequently as the warden's allotment for travel expenses will permit and good reasons exist for believing that conditions require his presence.

He must not only do patrol duty in the ordinary sense of the word, but he must endeavor to anticipate the movements of those who would violate the law. He must be alert, study the methods of violators, cultivate the friendship of law-abiding people, and open channels for information concerning those things of which he ought to get early knowledge.

PROCEDURE.

Section 1014 of the Revised States of the United States provides:

"For any crime or offense against the United States, the offender, ~~may~~, by any justice or judge of the United States, or by any United States commissioner, or by any ~~chancellor~~, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any state where he may be found, and agreeably to the usual mode of process against offenders in such state, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizance of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had."

This section relates to natural persons and does not apply to corporations which will be proceeded against as hereinafter mentioned.

In cases involving firms, copartnerships, or corporations special care should be taken to ascertain the full names and addresses of all the partners of a firm or copartnership; the full correct name of a corpor-

ation, the State under whose laws it is incorporated, date of incorporation, its principal place of business, and the full names and addresses of the principal officers. (For procedure in cases against corporations see instructions under heading "Proceedings against Corporations.")

While there are numerous officers given authority by Section 1014 to hold preliminary hearings it is the proper practice to go before the nearest United States commissioner.

Officials named in said Section 1014 customarily follow the practice in State courts. Wardens, therefore, must familiarize themselves with State laws on the subject of issuing and serving warrants, and in all cases where warrants are issued by State or municipal officials be guided by the provisions of State laws relating to the serving of such writs.

ARREST IN GENERAL.

A warden should sufficiently familiarize himself with the practice and procedure in criminal cases to avoid exceeding his authority. If a warden who acts within the scope of his employment and within his authority is sued on that account the Department of Justice will be requested to assist in his defense; but, if a warden knowingly exceeds his authority and gets into difficulties, he must personally defend himself.

No hard and fast rule as to when an arrest should be made can be stated; an employee must exercise his judgment. Usually no arrest should be made in trifling or technical cases; but in dealing with such cases great care must be exercised to avoid the appearance of partiality, and reports thereof should be forwarded promptly to the Bureau. No consideration of prominence or influence, when the offending party is of the age of mature judgment, should cause a warden to deviate from his duty of insisting that the law be observed.

A warden may make an arrest when armed with a warrant issued by a court having competent jurisdiction, or, without a warrant when the offense is committed in the warden's presence or view, in which event the arrest must be made immediately. An arrest without a warrant must not be made unless the violation is committed in the presence or view of the employee. The procedure in making arrests with and without warrants is hereinafter stated separately.

An arrest must be made for the purpose stated in the warrant, and if the accused so demands, the warrant must be read to him, as soon as the warden can do so without danger to himself or of the escape of the accused. When the arrest is made for an offense committed within the view of a warden he should inform the accused of the reason for making it.

To effect an arrest the warden making it should make known his authority (by exhibiting his badge or if he has a warrant, by showing his warrant) and by putting his hand upon the person of the party arrested, saying: "You are under arrest" or words of like import.

A person is under arrest when he is in custody or submits to it. When a person is detained by a warden or voluntarily accompanies him after being accused of a violation, he is under restraint and may claim he is under arrest. When a person has been arrested he must not be liberated by the warden unless the warden is satisfied that the accused is not the party who committed the offense, but must be taken before the nearest judicial officer to be dealt with according to law.

ARREST WITHOUT WARRANT.

The usual mode of procedure is here given. The practice may vary somewhat in different States, making it necessary for a warden to familiarize himself with the State laws governing court procedure in his district.

When a violation is committed in the view of an employee he should

immediately arrest the offender and take him before the nearest United States commissioner, or other magistrate or official, mentioned in Section 1014 of the United States Revised Statutes, unless the violator is well known to the employee and satisfactory arrangements can be made for the accused to appear before a commissioner or magistrate at a more convenient time in the near future; such an arrangement should be made only when the employee is satisfied that the accused will so appear, or, in case of his failure, that he can be easily located and arrested thereafter on a warrant.

In case the accused is not arrested, a report of the case together with affidavits of the witnesses should be forwarded promptly to the Bureau in order that the case may be transmitted to the Department of Justice for prosecution.

When the offender under arrest without warrant is brought before the magistrate a complaint should be prepared, sworn to before and filed with the magistrate, who will immediately inform the accused of the charge against him and of his right to the aid of counsel at every stage of the proceeding, and before any proceedings are had. If he does not desire counsel the accused must plead to the charge - either "guilty" or "not guilty". The accused may waive or demand an examination. Each step in the proceeding will be recorded by the magistrate in his docket.

In case of a plea of "guilty" or if examination is waived the magistrate will commit the defendant, fix bail immediately, and require the accused to give bond for his appearance at the next term of the United States court in the district in which the crime was committed. If an examination is demanded, the hearing may be had at once, or an adjournment had to a convenient date. In case of an adjournment the accused should be committed, bail fixed by the magistrate, and the accused required to give a bond for his appearance

at the examination. If the bond be not given, the warden should take the accused to the county jail designated in warrant of commitment there to be confined until the hearing is held, or to await the action of the next term of the United States court having jurisdiction of the case.

In all cases a certified copy of the warrant of commitment must be delivered to the sheriff or jailor as his authority to hold the prisoner, and the original warrant shall be returned to the proper court or officer, with the warden's return thereon.

The warden and the witness must be present at the hearing to testify to the facts tending to show that the accused is guilty of the charge made against him.

To authorize the commissioner or magistrate in an examination of an offender to commit he need not be convinced of the guilt of the accused, but the proof should be such as to afford probable cause to believe that the offense was committed, and by the accused; otherwise, it is his duty to discharge.

If the evidence shows the existance of probable cause for believing the accused to be guilty of the offense, the magistrate should commit him for the action of the United States court in the district where the crime was committed, fix bail, and require the accused to give bond for his appearance. In default of bail being given the accused should be confined in the jail designated in the warrant of commitment.

In all cases of arrest without warrant the warden should promptly report the facts to the Bureau.

ARREST WITH WARRANT.

Where an offense is not committed within view of the warden he should ascertain the material facts and report the case promptly to the Bureau with affidavits of the witnesses. If the papers tend to establish

that a crime has been committed they will be transmitted to the Department of Justice for appropriate action.

An emergency may arise requiring the prompt issuance of a warrant in order to prevent the escape of an accused person and in such cases a warden should apply to one of the officials named in Section 1014 of the United States Revised Statutes, preferably the nearest United States commissioner for a warrant commanding the arrest of the accused.

To obtain a warrant it is necessary to comply with certain conditions in order to give the magistrate jurisdiction. A complaint must be prepared showing the fact that a crime has been committed, and that the accused committed it; the complaint must be made by a person cognizant of the facts, sworn to before and filed with the magistrate.

The complaint should be carefully drawn, showing in the most direct language who is alleged to have committed the violation, the time and place where the alleged violation was committed, what acts the accused committed which constitute the violation and should allege that the acts stated were contrary to the Migratory Bird Treaty Act approved July 31, 1918.

If these papers are in proper form and the charges contained in the complaint tend to establish that a crime has been committed, and that the person named is guilty of a crime, the commissioner or other magistrate will issue a warrant for the arrest of the accused person.

The warrant for the arrest of the accused may be executed by any warden to whom it may be directed. The execution of the warrant consists of taking into custody the person named therein. The warden should make his return which consists of the production of the accused before the commissioner or magistrate, together with the warrant endorsed on the back thereof to show execution.

Before a warden serves any warrant or other court process he should carefully scrutinize the document for any defects or omissions; if he executes a defective process he may become personally liable.

For procedure from this point see instructions under "Arrest without warrant."

PROCEEDINGS AGAINST CORPORATIONS.

Corporations can not be prosecuted in the same manner as individuals. In a case against a corporation a warden will prepare separate affidavits for each witness, have them signed and executed before an officer authorized to administer oaths, and transmit the affidavits to the Bureau, with a report of the case.

MEMORANDA OF OBSERVATIONS.

All wardens, except those occupying cooperative positions, must keep diaries containing detailed records of their itineraries and of their activities. Immediately after making an arrest, while the circumstances are fresh in his mind, a warden must make full and complete notes in his diary of his observations of the actions of the accused, and mark for identification any contraband birds seized. The notes must contain the following data: (1) full name and address of the accused; (2) time when and place where the violation was committed; (3) particular acts, which can be proved, constituting the violation; (4) number and kind of birds seized; (5) statements made by accused when arrested; (6) names and addresses of persons present at time the violation was committed or when any statement was made by accused; (7) any other facts observed in connection with the case.

In cases of illegal killing of birds reference should be made of the distance between the warden and the accused at the time of the com-

mission of the violation, and, if it occurred between sunset and half an hour before sunrise, the exact time of its commission as shown by the warden's watch, the correctness of which should be verified, if possible. In brief, all facts and circumstances having a direct bearing on the case should be recorded to be later used in refreshing the warden's memory when in court to give his testimony. Such memoranda may be used to refresh the memory of a witness only when it was made at the time when the event occurred or immediately thereafter.

It should never be assumed that an accused person will plead guilty and that it is unnecessary to take proper precautions to preserve the evidence of guilt. Proceed in each case as though it is to be hotly contested and leave nothing undone that should be attended to in order to establish the guilt of the accused.

PRESERVATION OF EXHIBITS.

Migratory birds possessed contrary to law must be seized immediately by a warden, properly marked, and preserved, if possible, in their original condition for future use as evidence. Birds so seized must be marked or tagged forthwith for identification by the warden making the seizure with the following information: (1) date of seizure; (2) place of seizure; (3) name and address of person from whom seized; (4) species seized; (5) quantity seized; (6) witnesses present when seizure was made.

When birds seized are to be preserved to be offered as evidence at a subsequent time they must be placed in a package and sealed in such manner that, at any time, the warden can swear that the contents of such package are the identical contents that he placed therein.

If, for any reason, an exhibit is to be placed outside of the warden's control or possession, he must attach an indestructible marker thereon, so that when it is returned to him he can identify it as the one he had previously in his possession.

ASSISTANTS : HIRING OF.

Wardens must not hire assistants, except boatmen, guides, etc. temporarily not to exceed 4 or 5 days, without first receiving permission from the Bureau, in which case the name, address and occupation of such person, together with a statement of the work he is to perform and the reasons therefor must be furnished the Bureau. Temporary assistants should be hired only in exceptional and urgent cases in which the work to be done can not be performed effectively by the warden without an assistant. Persons must be appointed by the Secretary of Agriculture to enforce the provisions of the Migratory Bird Treaty Act in order to possess police powers thereunder.

A temporary employee does not possess the powers conferred by Section 5 of the Migratory Bird Treaty Act unless he has been regularly appointed by the Secretary of Agriculture to enforce the law, but he may assist a regular employee in making an arrest.

CORRESPONDENCE.

All letters to the Bureau should be directed to the "Chief, Biological Survey, Washington, D. C." No letter of inquiry should be sent to any other Department or Bureau of the Government.

No letter should embrace more than one subject matter. In transmitting information to the Bureau, or in requesting instructions or advice, write a separate letter on each topic, making each communication full and complete in itself. Do not ask for instructions or information in any report, but make inquiries by letter.

Attention is called to the following section of the Administrative Regulations of the U. S. Department of Agriculture:

"101.-Names on Letterheads.-No individual's name shall appear on the letterheads of any bureau, division, or office of the department."

The official title and office address may be printed on stationery, provided permission so to do is first obtained from the Bureau.

ATTENDANCE AT MEETINGS.

Delivery of Lectures

A warden may attend meetings occurring in the course of his official travel, when such attendance will be in the direct interest of his work, and he may deliver at such meetings lectures of instruction and disseminate information in regard to the work and the law for the protection of migratory birds.

Travel must not be performed, however, for the sole purpose of attending meetings without first obtaining from the Bureau permission so to do.

A warden must not attend a session of a State Legislature or appear before a legislative committee in the interest of conservation legislation unless permission has been first obtained from the Bureau. Such authorization will be granted only when a member of a game committee

of a legislature (preferably the chairman) requests the Bureau to grant such permission.

LEAVE OF ABSENCE.

Sections 27 to 91, inclusive, of the Administrative Regulations must be strictly followed.

It must be borne in mind that leave of absence is a privilege and not a legal right, and can be granted to a warden only when such leave can be taken without detriment to the service. A warden must anticipate taking annual leave at a time when his services are least required in his district. This will often obviate the necessity of revoking leave of absence and ordering the warden to return to duty before its expiration.

A warden will not be permitted to take annual leave while in travel status, unless before the commencement of the trip on which he desires to take such leave, he shall have first requested such leave of the Bureau and received permission to take it. Application for such permission shall state the extent of the travel to be performed, the reasons therefor, the time when and place where the warden expects to take leave of absence and the time when and place where he intends to return to duty.

EFFICIENCY RATING.

A warden will be rated upon efficiency and in fixing his rating the following matters will be considered:

- (1) General activity:
 - (a) Number of violations reported and the sufficiency of the evidence gathered upon which to base a prosecution;
 - (b) Completeness of reports;
 - (c) Knowledge of the law and of conditions;
 - (d) Cooperation with state officials.

